JAG SINGH v. TOONG FONG OMNIBUS CO. LTD. (No. 2)

[O.C.J. (Suffian J.) December 22, 1961]

[Kuala Lumpur — Suit No. 66 of 1961]

Practice and Procedure — Judgment read by Registrar owing to illness of Judge — No opportunity to argue regarding costs — Reopening of matter.

Costs — Contributory negligence — Discretion.

An order pronounced by a Judge whether in open Court or in Chambers can always be withdrawn, altered or modified by him, either on his own initiative or on the application of a party, until such time as the order has been drawn up, passed and entered.

In this case the learned Judge ordered that the plaintiff should get only half his taxed costs. * Owing to his sudden illness the judgment had to be read by the Senior Assistant Registrar and in the absence of the learned Judge the plaintiff was denied an opportunity to present arguments regarding costs. At the request of the plaintiff the matter was reopened, and *MacCarthy* v. *Raylton Productions* (2) was cited for the proposition that, unlike in admiralty cases, the practice in the Queen's Bench Division is that where the defendant has been held to be partly to blame, the plaintiff is entitled to the whole of his costs.

Held: the practice is not of general application. Costs are awarded at the discretion of the Court and each case should be considered on its own merits. In the circumstances of the case the plaintiff should get only half his taxed costs.

Cases referred to:—

(1) *In re Harrison's Share Under A Settlement, Harrison* v. *Harrison*, [1955] 1 Ch. 260.

(2) *MacCarthy* v. *Raylton Productions*, [1951] W.N. 376.

CIVIL SUIT.

Denis Murphy (*G. Tara Singh* with him) for the plaintiff.

M. Edgar for the defendants.

Suffian J.: In this case I found that both the plaintiff and the driver of the defendant company were equally to blame for the accident in which the plaintiff lost his right leg and accordingly I ordered that the plaintiff should get only half his taxed costs. Owing to my sudden illness the judgment had to be read by the Senior Assistant Registrar and in my absence the plaintiff was denied an opportunity to present arguments regarding costs. On 20th December, 1961 at his request I agreed to hear him on this point.

Mr. Edgar for the defendant company, argues that I have no power to reopen this matter. On the authority of the English Court of Appeal decision *In re Harrison's Share Under A Settlement, Harrison* v. *Harrison* (1), brought to my notice by Mr. Murphy for the plaintiff, I hold that an order pronounced by a Judge whether in open Court or in Chambers can always be withdrawn, altered or modified by him, either on his own initiative or on the application of a party, until such time as the order has been drawn up, passed and entered. In this case my judgment has not been perfected.

* Reported at p. 78, *supra*.

The next question which arises is whether I should vary the order regarding costs. Mr. Murphy cited *MacCarthy* v. *Raylton Productions* (2) for the proposition that, unlike in Admiralty cases, the practice in the Queen's Bench Division is that where the defendant has been held to be partly to blame, the plaintiff is entitled to the whole of his costs. I have considered the cases at pages 39-40 of *Bingham's* Motor Claims Cases, 4th Edition, which cases were also brought to my notice by Mr. Murphy, and I find that the practice is not of general application. Costs are awarded at the discretion of the Court and each case should be considered on its own merits.

I have carefully re-considered this matter and I regret that I am unable to alter my original decision that in the circumstances of this particular case it is fair that the plaintiff should get only half his taxed costs.

Order accordingly.

Solicitors: *Murphy & Dunbar; Bannon & Bailey.*

SUBA SINGH v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Rigby and Neal JJ.) September 12, 1960]

[Ipoh — F.M. Criminal Appeal No. 13 of 1960]

Criminal Law and Procedure — Murder trial — Drunkenness — Charge to the jury — Penal Code, ss.86(ii) and 302.

Where the prosecution relies on the presumption that a man intends the natural and probable consequences of his act to make out the intention which is a necessary ingredient of murder, the jury should be invited to consider the evidence of drunkenness as something which might have the effect of rebutting that presumption.

Cases referred to:—

(1) *Director of Public Prosecutions* v. *Beard*, [1920] A.C. 479.

(2) *R.* v. *Meade*, [1909] 1 K.B. 895.

COURT OF APPEAL (CRIMINAL).

R. Ramani for the appellant.

Abdul Hamid bin Omar (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): This appellant was convicted at the Muar Assizes for the murder of one Chand Singh in contravention of section 302 of the Penal Code. The verdict of the jury was a majority one.

At this stage I do not think it is necessary to say anything about the facts of the case beyond observing that there was abundant evidence to show that the appellant and the deceased came together in a street in Batu Pahat on 22nd April this year and the appellant inflicted on the deceased a stab wound as a result of which he died. I do not think that that stabbing has ever at any time been in any real controversy.